

## **REMARKS**

### **I. WITHDRAWN NOTICE OF ABANDONMENT**

A notice of abandonment was erroneously mailed on January 10, 2008 in the above-referenced application. The notice of abandonment states that the above-referenced application was abandoned in view of Applicants failure to timely reply to an Office letter mailed on November 29, 2006. The referenced November 29 letter was an Office Action that was mailed to attorney that is not of record in this matter. On May 2, 2007, the Office mailed the office action to the attorney of record and restarted the period for reply, thus making a reply to the outstanding Office Action due by the extendible due date of August 2, 2007. On August 2, 2007, Applicants timely submitted a Request for Pre-Appeal Conference and Notice of Appeal in the above-referenced application. In view of this submission, Applicants respectfully submit that the above-referenced application was not abandoned for failing to respond to the Office Action dated November 29, 2006. The Examiner confirmed that the notice of abandonment was erroneously issued in a voice mail to Applicants' representative left on January 17, 2008 and stated that he was "going to withdraw the abandonment and continue prosecution." On January 23, 2008, the Examiner mailed an Interview Summary indicating that "the notice of abandonment would be vacated." Applicants thank the Examiner for indicating a forthcoming withdrawal of the abandonment and respectfully requests written notice or an indication in the Official record that the abandonment has, in fact, been vacated.

### **II. CURRENT STATUS OF CLAIMS AND PENDING REJECTIONS**

Claims 28, 31-47, 51-58, 63-65, 83-84, and 91-106 are pending in the present application. Claims 28, 31-32, 35, 38-41, 46-47, 51-54, and 56-58 have been amended to more clearly recite the features of the claimed inventions. New claims 91-106 have been added. Support for new claims 91-106 may be found, for example, at least in the application as originally filed. No new matter has been added by these amendments or new claims.

Claims 28, 31-59, 63-65 and 83-84 were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Pat. No. 6,089,284 to Kaehler et al. ("Kaehler").

In view of the foregoing amendments and following remarks, Applicants respectfully request reconsideration of all outstanding rejections. Applicants further submit that the claims are in condition for allowance and such allowance is earnestly solicited.

**III. THE PENDING CLAIMS ARE NOT ANTICIPATED BY UNITED STATES PATENT NUMBER 6,089,284 TO KAEHLER ET AL.**

Claims 28, 31-59, 63-65 and 83-84 were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Pat. No. 6,089,284 to Kaehler et al. ("Kaehler"). To the extent this rejection applies to the pending claims, Applicants respectfully traverse the rejection and request reconsideration thereof for the reasons set forth below.

Applicants initially note that because claims 48-50 and 59 have been canceled, this rejection is moot with respect to claims 48-50 and 59.

**A. Independent Claim 28 Is Not Anticipated by Kaehler**

Independent claim 28 recites a transaction processing system comprising a processor to "determine, from said customer/transmitter identifier and a merchant identifier, a payment processor." (emphasis added). Additionally, amended claim 28 recites "a merchant [] associated with a given brand" and that the recited merchant identifier "is the same for all stores associated with a given brand." As set forth below, Kaehler does not anticipate independent claim 28 because Kaehler does not teach the recited transaction processing system that "determine[s], from said customer/transmitter identifier and a merchant identifier, a payment processor."

As stated in the specification, in one embodiment, the recited transaction processing system "provides a much greater degree of convenience to participating customers since it allows them to preassign specific payment methods to specific retail establishments and to have the preassigned payment methods automatically selected by the transaction processing system whenever the customer utilizes his/her wireless customer transceiver in the merchant's retail establishment." See 09/505721, 6:17-22. "When the customer enters data in the customer transaction database 100, he/she may select any one of the merchant's accepted payment methods in which he/she also has accounts." See 09/505721, 36:1-3. "Customers may also identify a default payment

method to be applied to a participating merchant for which no other payment method has been identified. This default payment method would also be applied to new merchants that join the transaction processing system 26 after the customer enrolled." See 09/505721 36:21-37:2. "If ... the system finds the merchant's name, it identifies the customer's payment method for that particular merchant ... and determines the flow and destination of the authorization data, based on the type of transaction (credit, debit, cash, etc.) See 09/505721 40:8-10. "The processor receives the authorization request and transmits it to the payment processing system dictated by the customer's payment choice for the transaction." See 09/505721, 12:15-17 (emphasis added). Thus the customer can select different payment options for different merchants (*e.g.*, as claimed in claim 59). This feature, as claimed in amended claim 28, is neither disclosed in, nor suggested by, Kaehler. Kaehler does not teach or suggest a transaction processor where payment methods are determined based on customer information and a merchant identifier.

Instead, in Kaehler, the customer directly communicates the form of payment to the point of sale device during the transaction. "The information to be authorized is generally financial account information and can either be transmitted with the transponder ID or stored at the central control system 50 or the host network 94 in association with the transponder ID." See Kaehler, 12:36-40. A host network or central control system that associates account information with a transponder ID only, to effect payment, is not a transaction processing system that "determine[s], from said customer/transmitter identifier and a merchant identifier, a payment processor."

Moreover, the portions of Kaehler that the Office Action relies upon as teaching the recited transaction processor do not teach or suggest the existence of a merchant ID in any way. For example, column 13, lines 36-49 at best teaches associating an order with a transponder ID to effect payment. In that portion, there is no mention of a merchant ID. Column 11, lines 1-14 at best teach a *dedicated* network or authorization interface, but does not mention a merchant identifier. Finally, column 8, lines 58-67 to column 9, lines 1-18 at best teaches a communications controller for a transponder and does not mention a merchant identifier. Because the relied-upon portions do not teach

or suggest the existence of a merchant identifier, it follows that the relied-upon portions do not teach or suggest a transaction processing system that determines a payment processor from a merchant identifier, much less a transaction processing system that “determine[s], from said customer/transmitter identifier and a merchant identifier, a payment processor.”

In view of the above, it is respectfully submitted that Kaehler does not anticipate or make obvious claim 28. Applicants therefore respectfully submit that claim 28 is allowable over Kaehler.

**B. Dependent Claims 31-47 and 83 Are Not Anticipated by Kaehler**

Claim 31 depends from allowable claim 28 and therefore is allowable for at least that reason.

Claim 32 depends from allowable claim 28 and therefore is allowable for at least that reason. Additionally, claim 32 is allowable because Kaehler does not teach or suggest the recited customer transceiver. Claim 32 recites “wherein said customer transceiver is further comprised of a security device operable to capture biometric data and to convert said data into an electronic representation of said data.” (emphasis added). At best, Kaehler teaches a fuel dispenser associated with a fingerprint imager. See Kaehler, 29:21-32. A fuel dispenser associated with a fingerprint imager is not a customer transceiver comprised of “a security device operable to capture biometric data and to convert said data into an electronic representation of said data.” Because Kaehler does not teach or suggest a customer transceiver comprising a security pad operable to capture biometric data, Kaehler does not anticipate claim 32. Applicants therefore respectfully submit that claim 32 is allowable over Kaehler for at least this additional reason.

Claims 33-35 depend from allowable claim 32 and are therefore allowable for at least that reason.

Claim 36 depends from allowable claim 31 and therefore is allowable for at least that reason. Additionally, claim 36 is allowable because Kaehler does not teach or suggest the recited customer transceiver. Claim 36 recites a “customer transceiver processor [that] is adapted to: compare a transaction amount with a dollar amount

stored in said customer transceiver memory; and inhibit transmission of said customer/transmitter identifier when said transaction amount is greater than said dollar amount.” (emphasis added). Kaehler does not teach or suggest a customer transceiver that compares and inhibits in the manner recited in claim 36. Instead, Kaehler at best teaches a dispenser that receives a stored value from a transponder and stops the dispenser control system before that value is exceeded. See Kaehler, 19:2-29. A fuel dispenser that will stop a transaction based on a stored value is not a customer transceiver that inhibits transmission of a customer/transmitted identifier. Moreover, there is no teaching or suggestion in Kaehler to inhibit transmission of a customer/transmitter identifier from a transponder in any manner. Kaehler therefore does not teach or suggest a customer transceiver that compares and “inhibit[s] transmission of said customer/transmitter identifier when said transaction amount is greater than said dollar amount.” Applicants therefore respectfully submit that claim 36 is allowable over Kaehler for at least this additional reason.

Claim 37 depends from allowable claim 31 and therefore is allowable for at least that reason.

Claim 38 depends from allowable claim 28 and therefore is allowable for at least that reason. Additionally, claim 38 is allowable because Kaehler does not teach or suggest the recited customer transceiver. Claim 36 recites a “customer transceiver comprising memory, a processor coupled to the memory, and a keyboard coupled to the processor...” (emphasis added). The Office Action mistakenly aligns the recited customer transceiver with the general transponder as disclosed in Kaehler and asserts that a keyboard is inherent with this type of “computer.” Applicants respectfully disagree. Although Kaehler may teach a personal transponder (e.g., one that is mounted on a key fob, a wallet card or any other device (See Kaehler, 6:63-66)), Kaehler does not teach a personal transponder having a keyboard, and Applicants respectfully assert that it would not be inherent to associate a keyboard with such a device. Accordingly, claim 38 is not anticipated by Kaehler. Applicants therefore respectfully submit that claim 38 is allowable over Kaehler for at least this additional reason.

Claim 39 depends from allowable claim 28 and therefore is allowable for at least that reason. Additionally, claim 39 is allowable because Kaehler does not teach or suggest the recited customer transceiver. Claim 39 recites that the customer transceiver is "embedded inside an article of clothing." Kaehler does not teach or suggest any device that is embedded in clothes. In fact, Kaehler does not even mention the words "clothes" or "clothing" whatsoever. Applicants therefore respectfully submit that claim 39 is allowable over Kaehler for at least this additional reason.

Claim 40 depends from allowable claim 28 and therefore is allowable for at least that reason. Additionally, claim 40 is allowable because Kaehler does not teach or suggest the recited customer transceiver. Claim 40 recites that the customer transceiver is "embedded inside an item of jewelry." Kaehler does not teach or suggest any device that is embedded inside an item of jewelry. In fact, Kaehler does not even mention the word "jewelry" whatsoever. Applicants therefore respectfully submit that claim 40 is allowable over Kaehler for at least this additional reason.

Claims 41-47 variously depend from allowable claim 28 and are therefore allowable for at least that reason.

Claim 83 depends from allowable claim 28 and therefore is allowable for at least that reason.

**C. Independent Claim 51 Is Not Anticipated by Kaehler**

Amended Independent claim 51 contains similar recitations as claim 28 and is allowable over Kaehler for at least the reasons discussed above with respect to claim 28. Specifically, claim 51 recites "selecting a payment processor at the transaction processor based at least in part upon information associated with the customer identification data and a merchant identifier stored in a database accessible by the transaction processor" Additionally, amended claim 51 recites "a merchant [] associated with a given brand" and that the recited merchant identifier "is the same for all stores associated with a given brand." Because Kaehler does not teach or suggest selecting a payment processor based on information associated with a merchant identifier, Kaehler does not anticipate claim 51.

Amended claim 51 also recites "wherein each customer account comprises one or more preassigned payment methods, and the one or more preassigned payment methods are associated with a respective one or more merchants, and the one or more preassigned payment methods vary for transactions with different merchants in multiple customer accounts." Because Kaehler only discloses one merchant, Kaehler does not teach or suggest that "the one or more preassigned payment methods are associated with a respective one or more merchants."

Applicants therefore respectfully submit that claim 51 is allowable over Kaehler.

**D. Dependent Claims 52-58, 63-65 and 84 Are Not Anticipated by Kaehler**

Claims 52-56 variously depend from allowable claim 51 and are therefore allowable for at least that reason.

Claim 57 depends from allowable claim 51 and therefore is allowable for at least that reason. Additionally, claim 57 is allowable because Kaehler does not teach or suggest the recited database information. Specifically, Kaehler does not teach or suggest "processing the authorization request at the transaction processor according to one of the one or more preassigned payment methods." Instead, Kaehler simply teaches authorizing credit card transactions based on information received from a dispenser's card reader. See Kaehler, 7:37-43 and 11:7-11. The act of authorizing credit card transaction based on information received from a dispenser's card reader in no way teaches or suggests database information comprising "processing the authorization request at the transaction processor according to one of the one or more preassigned payment methods." Applicants therefore respectfully submit that claim 57 is allowable over Kaehler for at least this additional reason.

Claim 58 depends from allowable claim 57 and therefore is allowable for at least that reason.

Claims 63-65 variously depend from allowable claim 52 and are therefore allowable for at least that reason.

Claim 84 depends from allowable claim 51 and therefore is allowable for at least that reason.

**E. New Claims 91-106 Are Not Anticipated Or Rendered Obvious by Kaehler**

New claims 91 and 92 depend from allowable claim 28 and therefore are allowable for at least that reason.

New claims 93-98 and 106 depend from allowable claim 51 and therefore are allowable for at least that reason.

New claims 99-105 recite similar features as claim 28 and are allowable for at least similar reasons as discussed above with respect to claim 28.

In view of the above, Applicants respectfully request that the rejection of claims 28, 51-59, 63-65 and 83-84 under 35 U.S.C. § 102(e) be withdrawn.



**IV. CLOSING COMMENTS**

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, a Notice of Allowance is earnestly solicited. As always, if the Examiner has any questions or concerns, the Examiner is encouraged to contact the undersigned attorney at any time.

No fees are believed to be due for the net addition claims. If there is a shortage or deficiency in fees, the Commissioner is hereby authorized to charge or credit any difference to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,  
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By: \_\_\_\_\_



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